

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
First-Class Package Service
First-Class Package Service Contract 5

Docket No. MC2012-21

Competitive Product Prices
First-Class Package Service Contract 5
(MC2012-21)
Negotiated Service Agreement

Docket No. CP2012-27

ORDER ADDING FIRST-CLASS PACKAGE SERVICE CONTRACT 5 TO THE
COMPETITIVE PRODUCT LIST

(Issued May 25, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as First-Class Package Service Contract 5 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add First-Class Package Service Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 9, 2012 (Request).

II. BACKGROUND

On May 9, 2012, in accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that First-Class Package Service Contract 5 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. 3633(a), a copy of Governors’ Decision No. 11-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. *Id.*, Attachment F.³

On May 11, 2012, the Commission issued an order establishing the two dockets, appointing a Public Representative, providing interested persons with an opportunity to comment, and requesting supplemental information regarding the basis of the contract’s volume distribution.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. Request, Attachment F at 7. The Commission has consistently denied similar requests. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1344, Notice and Order Concerning the Addition of First-Class Package Service Contract 5 to the Competitive Product List, May 11, 2012.

On May 22, 2012, the Postal Service filed a response stating that the source of the instant contract's volume distribution is the FY2011 billing determinants.⁵

III. COMMENTS

The Public Representative filed comments on May 18, 2012.⁶ No other interested person submitted comments. The Public Representative states that she has reviewed the Request, supporting documentation, and supporting financial models. PR Comments at 1.

She concludes that First-Class Package Service Contract 5 satisfies the criteria of 39 U.S.C. 3642(b) and 3633(a). *Id.* at 2. She also states that the instant contract contains provisions favorable to both the Postal Service and the public. However, she expresses concern regarding the Postal Service's decision to exempt the mailer from the requirement to apply an Intelligent Mail barcode (IMb) to the mailpiece. She states that this waiver undermines the key initiative of promoting Intelligent Mail and degrades the visibility of First-Class Package services. *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning First-Class Package Service Contract 5 to either the market dominant or the competitive product list. See 39 U.S.C. 3642(b)(1); 39 CFR part 3020.30(d). In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those

⁵ Response of the United States Postal Service to Request for Supplemental Information, May 22, 2012 (Response). The Response was filed concurrently with a Motion of the United States Postal Service for Late Acceptance of Response to Request for Supplemental Information (Motion). The Motion is granted.

⁶ Public Representative Comments, May 18, 2012 (PR Comments).

who use the product, and the likely impact on small business concerns. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.30(f), (g), and (h).

The Postal Service asserts that it provides First-Class Package service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it therefore can neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the First-Class Package Service Contract 5 product is appropriately classified as competitive and added to the competitive product list.

Cost considerations. Because First-Class Package Service Contract 5 is a competitive product with rates or classes that are "not of general applicability", the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. 3632(b)(3), 3633(a), and 39 CFR 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, which demonstrates that the instant contract satisfies the statutory and regulatory requirements. The Public Representative concurs. PR Comments at 1-3. The Commission finds that First-Class Package Service Contract 5 complies with the provisions applicable to rates for competitive products.

IMb. Although concluding that the contract satisfies the requirements of 39 U.S.C. §§ 3633 and 3642, the Public Representative expresses concern that the Postal Service's decision to waive Domestic Mail Manual (DMM) § 433.1.5.b may be

inconsistent with its adoption of IMb for parcels.⁷ PR Comments at 2. While the point is not without merit, the Postal Service has considerable flexibility to negotiate the terms of its competitive contracts. In negotiating its contracts, the Postal Service must often, as in this case, balance various considerations. The waiver of DMM § 433.1.5.b is not a bar to approval of the instant contract.

Other considerations. By its terms, the contract becomes effective on the day on which the Commission issues all necessary regulatory approvals and it expires 3 years later. Request, Attachment B at 2. The Postal Service shall notify the Commission of the effective dates of the instant contract.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) cost data, and revenues and volumes disaggregated by rate category.

In conclusion, the Commission approves First-Class Package Service Contract 5 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. First-Class Package Service Contract 5 (MC2012-21 and CP2012-27) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

⁷ See Federal Register, Volume 76, Issue 187 (September 27, 2011) at 59504-59512.

2. The Postal Service shall promptly notify the Commission of the effective date of the contract, and shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) cost data, and revenues and volumes disaggregated by rate category.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s Order in Docket Nos. MC2012-21 and CP2012-27. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

* * * * *

Negotiated Service Agreements

Domestic

* * * * *

First-Class Package Service Contract 5

* * * * *